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AFRCI36-114

BY ORDER OF THE COMMANDER AIR FORCE RESERVE COMMAND

AIR FORCE RESERVE COMMAND INSTRUCTION 36-114

10 August 2001

Personnel

PROCEDURES ON AIR RESERVE TECHNICIANS (ART) WHO LOSE ACTIVE MEMBERSHIP IN THE RESERVE

OPR: HQ AFRC/DPCE (Mr. Anthony V. Evans)

Certified by: HQ AFRC/DP (Col Junior R. Golden)

Supersedes AFRCI 36-114, 14 February 1997

Pages: 6/Distribution: F

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This instruction implements AFRD 36-1, *General Civilian Personnel Provisions and Authorities*, and outlines provisions necessary to administer program requirements for air reserve technicians (ART) who lose active membership in the Air Force Reserve Command (AFRC) unit of assignment for any reason. It applies to all civilian personnel flights and offices (CPF/CPO) that service ART employees and to all AFRC units authorized ART positions. It should be used in conjunction with applicable public laws, 10 U.S.C. 10216 – 10218, 38 U.S.C. Chapter 43, *The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994*, FPM Supplement (Internal) 930-71, *Recruitment of Air Reserve Technicians Through Competitive Examination (ART Agreement)*, DoD Directive 1205.18, *Full-Time Support (FTS) to the Reserve Components*, DoD Priority Placement Program (PPP) Operations Manual, AFRD 36-7, *Employee and Labor-Management Relations*, AFI 36-108, *Air Reserve Technician (ART) Program*, AFI 36-704, *Discipline and Adverse Actions*, AFI 36-2612, *United States Air Force Reserve (USAFR) Reenlistment and Retention Program*, and AFRCI 36-201, *Air Reserve Technician (ART) Officer--Extension to Mandatory Separation Date (MSD)*.

### **SUMMARY OF REVISIONS**

This revision clarifies the procedures for handling ARTs who lose active membership in their respective reserve unit and incorporates provisions of the National Defense Authorization Act (NDAA) of 2000 and NDAA 2001 (including 10 U.S.C. Sections 10216 – 10218).

**1. Concept of an ART.** The Air Force and the Office of Personnel Management (OPM) have agreed that an ART must:

- 1.1. Meet Air Force physical and military assignment requirements for the reserve position to which assignment is made.
- 1.2. Maintain active membership in the Air Force Reserve unit in which the position is authorized.
- 1.3. Be assigned militarily to the designated ART position.

**\*2. ART.** ARTs are full-time civilian employees who are also active members of the Air Force Reserve

unit in which they are employed. In addition to their civilian assignments, they are assigned to equivalent positions in the reserve organization with a reserve military rank or grade. They play vital roles in the combat readiness of their reserve unit by training other reservists and serving as mobilization assets when the unit is mobilized.

**\*3. Loss of Active Membership in the Reserve.** Active membership in the applicable reserve unit is a condition of employment. Loss of active membership in the Reserve could be for all ART positions or only for the current ART position of assignment. Such loss may result in the involuntary removal from Federal employment for failure to maintain a basic condition of employment for an ART position. The four main categories of loss of active membership in the Reserve are:

\*3.1. Officer Mandatory Separation Date (MSD) Program (First Category). ART officers who lose active membership in the Reserve due to reaching their reserve/military MSD face mandatory removal from their ART position. This program helps to ensure military mission capability. Assuming age and length of service requirements are met, such individuals would be eligible for discontinued service retirement (DSR) from their civilian position following the involuntary removal. Although potentially eligible for DSR after reaching the reserve/military MSD, ARTs under the age of 60 may request extensions to their MSD IAW AFRCI 36-201, which, if approved, enable each individual to be eligible for DSR with an immediate annuity unreduced because of age [for ARTs covered by the Civil Service Retirement System (CSRS)] or immediate receipt of the annuity supplement [for ARTs covered by the Federal Employees Retirement System (FERS)].

\*3.2. Enlisted High-Year-of-Tenure (HYT) Program (Second Category). ART enlisted members who lose active membership in the Reserve due to reaching their reserve HYT date face mandatory removal from their ART position. This program helps to ensure military mission capability. ART reserve/military HYT dates are automatically extended to the first date the ART attains eligibility for optional civil service retirement or age 60, whichever occurs first IAW AFI 36-3612. In some cases, enlisted ARTs may reach age 60 and be militarily retired (losing active membership in the Reserve) before accruing 20 years of potentially creditable service for civilian retirement. In those cases, they are continued in the Part A (civilian) position until reaching civilian optional retirement eligibility or being affected by the separation requirements described in paragraph 3.5.2, whichever occurs first.

\*3.3. Voluntary or Within the Individual's Control (Third Category). This term has unique meaning in the ART program and should not be confused with the dictionary definition. The term means a loss of active membership in the applicable reserve unit or position of assignment that includes, but is not limited to, those situations that follow. Additional situations may be added through policy letter or subsequent revision to this instruction.

3.3.1. Failure to reenlist or reenlistment denied.

3.3.2. Fraudulent enlistment.

3.3.3. Ineptitude, unsuitability, unfitness, misconduct, or inefficiency, or any other reasons specified for discharge of officers or enlisted members in AFI 36-3209, *Separation Procedures for Air National Guard and Air Force Reserve Members*.

3.3.4. Resignation or voluntary retirement (unless resignation or retirement is in lieu of medical disqualification beyond the individual's control).

3.3.5. Failure to participate in prescribed reserve activities.

3.3.6. Reassignment as inactive member of the Reserve for unsatisfactory participation or failure to meet standards.

3.3.7. Mental conditions or physical conditions, such as being overweight, which authorized military medical personnel consider within the individual's control.

3.3.8. Failure to be promoted to the grade of first lieutenant, or being twice deferred for promotion to captain, major, or lieutenant colonel.

3.3.9. Enlisted ARTs who become commissioned officers.

3.3.10. Accepting a military assignment to a non-ART reservist position.

3.3.11. Accepting military promotion to the grade of colonel (O-6) when it exceeds the military grade authorized for the ART position of assignment.

3.3.12. Voluntary military retirement while on an active duty tour (AGR).

\*3.4. Involuntary or Beyond the Individual's Control (Fourth Category). The only situation covered by this term involves ARTs failing a reserve medical examination for reasons that military medical personnel determine to be beyond the individual's control. ARTs in this situation who are physically/medically qualified to perform the duties of the civilian part (Part A) of the ART position may be retained in the Part A position IAW the procedures in paragraphs 3.5 and 4.4, below. An agency medical authority, i.e. at a base or contract facility, must make the determination as to whether or not the individual is medically qualified to perform the civilian duties.

\*3.5. Non-Dual Status Technician (NDST). Term for employees who meet the conditions in paragraph 3.4 and are retained on the civilian part of their ART positions despite the loss of active membership in the Reserve. NDSTs are subject to the mandatory separation provisions of 10 U.S.C. 10218 as well as the separation provisions based on failure to maintain active membership in the Reserve that are described in this instruction.

\*3.5.1. NDSTs are notified of conditions under which they are being retained in ART positions by including an appropriate statement on the Standard Form (SF) 50-B, Notification of Personnel Action, under Remarks. Employees covered by paragraph 3.4 must be found medically qualified to perform the civilian duties of the ART position prior to any official personnel action in order to be eligible for designation as NDST. See paragraph 4.4 for the appropriate procedures to follow. NDST does not apply to ARTs affected by officer mandatory separation, enlisted HYT, or to ARTs occupying key positions as defined in Appendix D of FPM Supplement 930-71 (Internal).

\*3.5.2. NDSTs are separated IAW 10 U.S.C. 10218 and command policy as outlined in the following rules initially contained in the NDAA of 2000.

\*3.5.2.1. NDSTs first hired as an ART or military reserve technician (dual status) on or before 10 Feb 96 must be separated no later than 30 days after attaining eligibility for civil service retirement unreduced due to age or years of service. This date will depend on whether the employee is covered by CSRS or FERS. OPM has determined the earliest eligibility for CSRS employees or FERS employees with a CSRS component is reached at age 55 with 20 years of service or age 62 with 5 years of service. FERS employees reach eligibility at age 50 with 20 years of service, any age with 25 years of service, or age 62 with 5 years of service.

\*3.5.2.2. NDSTs first hired as an ART or military reserve technician (dual status) after 10 Feb 96 must be separated no later than one year after loss of active membership in the Reserve, if ineligible for a civil service annuity at the time dual status is lost. If eligible for an annuity as discussed in paragraph 3.5.2.1, the NDST must be separated no later than 30 days after loss of active membership in the Reserve. If an NDST is ineligible for an annuity at the time active membership in the Reserve is lost, but becomes eligible within 11 months, the NDST must be separated no later than 30 days after becoming eligible for

an annuity.

\*3.5.3. NDSTs cannot be retained when AFRC units are mobilized. In the event of the unit's demobilization, former NDSTs who lost their employment as a result of the unit's mobilization will be given consideration for reemployment to non-ART positions in the same manner and with the same entitlement as any other employee on the Reemployment Priority List (RPL).

\*3.6. Valid Offer. For ARTs, a valid offer is an offer of assignment to a non-ART position at any grade level or Air Force activity for which registered in the Department of Defense (DoD) Priority Placement Program (PPP). If the employee refuses a valid offer, he or she is precluded from further consideration for placement that otherwise would have been provided under this instruction.

\*3.7. Determining Eligibility for Civil Service Retirement. All service that is potentially creditable for civilian retirement will be considered in eligibility determinations, even though deposits for some service may be required. For example, all FERS- or CSRS-covered service, all active duty military service, refunded CSRS service, and temporary service prior to 1989 is potentially creditable. Although creditable toward a CSRS retirement, temporary service after 1988 can never be credited toward a FERS retirement and would not be counted when determining FERS eligibility dates. Employees are responsible for ensuring that all service is actually creditable by making any required deposits.

**\*4. Effect of Loss of Active Membership in the Reserve.** The processes applicable to ARTs who lose active membership in the applicable reserve unit for any reason are:

\*4.1. Officer MSD Program (paragraph 3.1). Officers must ensure they are registered by HQ AFRC/DPCS in the DoD PPP to avail themselves of AFRC's intent to provide them with a one-year registration period prior to their separation. However, failure to be registered one year prior to a member's MSD will not extend the date of separation. Separation is effected on the MSD regardless of the length of registration. Each member may register beyond the local commuting area and for lower-graded jobs in accordance with the DoD PPP procedures. If member registers for and accepts an offer to a lower-graded position, pay retention is not authorized.

\*4.2. Enlisted HYT Program (paragraph 3.2). Enlisted members must ensure they are registered by the servicing civilian personnel flight (CPF) in the DoD PPP to avail themselves of AFRC's intent to provide them with a one-year registration period prior to their separation. However, failure to be registered one year prior to a member's HYT date will not extend the date of separation. Separation is effected on the HYT date regardless of the length of registration. Each member may register beyond the local commuting area and for lower-graded jobs in accordance with the DoD PPP procedures. If member registers for and accepts an offer to a lower-graded position, pay retention is not authorized.

4.3. Voluntary or Within the Individual's Control (paragraph 3.3). Members face the immediate initiation of removal action. Although not entitled to any type of priority consideration, management may consider such employees for possible placement in other unit non-ART vacant positions. Pay retention is not appropriate. Placement efforts must not, however, delay removal from the ART position.

\*4.4. Involuntary or Beyond the Individual's Control (paragraph 3.4). Members should be treated according to the designation of their position (key or non-key as defined in Appendix D of FPM Supplement 930-71) and their date of first hire into an ART or military reserve technician (dual status) position. Non-key members should be converted to NDST with a personnel action; do not convert key members with a personnel action but code their positions as NDST in the civilian data system.

\*4.4.1. ARTs in key positions are registered in the DoD PPP for Air Force activities in their local commuting area; they may voluntarily expand consideration in accordance with DoD PPP procedures. Registration is for one year. If not placed in a non-ART position during the registration, removal action

is effected at the end of the registration period, unless the provisions detailed in paragraph 3.5.2 require an earlier separation date. Declination of a valid offer precludes them from further consideration for placement that otherwise would have been provided under this instruction.

\*4.4.2. ARTs in non-key positions are registered in the DoD PPP for Air Force activities in their local commuting area one year prior to the separation date determined IAW paragraph 3.5.2; they may voluntarily expand consideration in accordance with DoD PPP procedures. They remain as NDSTs until affected by the separation provisions of paragraph 3.5.2. Declination of a valid offer precludes them from further consideration for placement that otherwise would have been provided under this instruction.

\*4.5. In any of the above situations where employees are registered in the DoD PPP, registration is in accordance with the DoD PPP Operations Manual. Registration may continue for one year after separation so long as the employee is not eligible for optional civil service retirement.

\*4.6. Before assigning a medically disqualified ART to NDST under paragraph 4.4, unit commanders/senior ARTs will ensure the appropriate personnel actions are taken in the following order:

\*4.6.1. Assign the employee to an equivalent non-ART civilian position for which otherwise qualified.

\*4.6.2. Offer the individual a lower-grade non-ART civilian position acceptable to the employee and for which otherwise qualified. Pay retention is appropriate for this type of action.

\*4.6.3. Consider waiver of qualification requirements under applicable regulatory directives for actions listed above.

\*4.7. If the ART is not medically qualified to perform the civilian duties, the ART is treated in the same manner as any civilian employee who is medically unable to perform. Generally, ART positions are not reworked for accommodation purposes due to the military mission necessity for the duties as described.

\*4.8. Loss of Reserve Status in Conjunction with Restoration Rights under USERRA. ART employees who are eligible for the statutory restoration rights provided by USERRA upon completion of an active duty tour (e.g., have not exceeded a cumulative five years on active duty), but have lost active membership in the Reserve during the tour, are treated in the same manner as if they had not left the ART position. Note: Consistent with USERRA (specifically, 38 U.S.C. Section 4312), the restoration rights of employees absent from their position for more than the cumulative five years allowed under USERRA (subject only to extensions and exemptions authorized in the statute) may have expired. Such employees are subject to removal based upon that continued absence of more than five years (including any period of extension or exemption), rather than on removal for loss of active membership in the Reserves described in paragraph 3, above.

\*4.8.1. Employees who lose their military status while on active duty due to a voluntary action are not entitled to continuing employment under USERRA. They may exercise their restoration rights, but face immediate initiation of removal action upon restoration for failure to maintain a condition of employment. For example, an ART on an active duty tour who lost active membership in the Reserve for reasons within his or her control under paragraph 3.3 would be returned to an ART position for a minimum of 30 days during which time removal action would be initiated.

\*4.8.2. Employees who are restored and subsequently fail to maintain eligibility for active membership in the Reserve because of a voluntary action for reasons within their control (see paragraph 3.3) are not entitled to continued employment (i.e. they are not entitled to protection from removal after restoration under Section 4316 of USERRA). They face immediate initiation of removal action for failure to maintain a condition of employment. For example, an ART who restored from active duty and lost his or her active membership in the Reserve six months later for failure to participate in prescribed reserve activities would face removal action for failure to maintain a condition of employment.

\*4.8.3. Employees on active duty who lose their military status for medical disqualification are treated as though they never left their ART employment. Refer to paragraph 3.3.7 and paragraph 4.3 for voluntary actions determined to be within the individual's control (members may exercise their restoration rights, but face immediate initiation of removal action). Refer to paragraph 3.4 and paragraph 4.4 for involuntary actions determined to be beyond the individual's control. For example, an ART assigned to a non-key position who lost active membership in the Reserve for medical reasons while on tour, would be restored as NDST if found to be medically fit to perform the civilian duties of that position.

## **5. Responsibilities:**

5.1. ART Military Personnel Flight (MPF) chiefs notify appropriate Civilian Personnel Flights (CPF) or Offices (CPO) when, for any reason, an ART loses or is about to lose active membership in the Reserve. The MPF chief also notifies appropriate CPFs or CPOs 14 months in advance of an enlisted ART's HYT date IAW AFI 36-2612, paragraph 7.5.2.2. The CPF or CPO ensures registration in the DoD PPP is accomplished in a timely manner according to this instruction. MPFs and CPFs or CPOs jointly establish local procedures for this purpose. HQ AFRC/DPCS registers ART officers in the DoD PPP, when appropriate, for loss of active membership in the Reserve prior to MSD.

5.2. ART unit commanders/senior ARTs, MPFs, and CPFs or CPOs jointly determine if loss of active membership in the Reserve is within an individual's control, consistent with this instruction. Refer questionable cases to HQ AFRC/DPCE for a decision.

JAMES E. SHERRARD III, Lt Gen, USAF

Commander